IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 6370 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHETSHI KUSHALBHAI PATEL & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR DHAVAL D VYAS for Applicant(s) : 1 - 2.
MR RC KODEKAR, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR CL SONI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/07/2007

ORAL JUDGMENT

1. Rule. Shri R.C.Kodekar, learned APP waives service of rule on behalf of the respondent No.1 – State and Shri C.L.Soni, learned advocate

waives service of rule on behalf of the respondent No.2 – original complainant. With the consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing today.

2. By way of this application under Section 482 of the Cr.P.C., the petitioners – original accused Nos.5 and 6 have prayed to quash and set aside the complaint being CR No. I 42/2007 registered with Patdi Police Station.

3. At the outset, Shri Dhaval Vyas, learned advocate appearing for the petitioners has submitted that the petitioners were originally earlier interested in purchasing the property in question, however, in view of the family dispute, the petitioners are not interested in purchasing the property in question. He has also further submitted that as such, there is no power of attorney in favour of the petitioners as alleged in the complaint and he has further stated under the instructions from the

petitioner No.1 that if, ultimately, it is found that any such power of attorney is there, the same shall not be utilized and / or used by him. He has further submitted that so far as the impugned complaint is concerned, on bare reading of the complaint and the averments, no cause is made out against the petitioners. It is submitted that the only allegation against the petitioners was that the petitioner No.1 wanted to purchase the property in question and that he is having the power of attorney of Vasudevbhai Shankarbhai Dave. Shri C.L.Soni, learned advocate appearing for the respondent No.2 is not in position to satisfy this Court with regard to any case made out against the petitioners for the offence punishable under Sections 406, 409, 420, 465, 467, 471 and 114 of the I.P.C.

4. Considering the aforesaid submissions made by Shri Vyas, learned advocate appearing for the petitioners under the instructions and considering the entire complaint and the

averments in the complaint, this Court is of the firm opinion that no case is made out against the petitioners for the offence alleged against them in impugned complaint in question. Even if, the complaint is considered and taken in its entirety, no case is made out against the petitioners for the offence alleged in the complaint. Under the circumstances, to continue the criminal proceedings against the petitioners would be abuse of process of law. The petitioners are directed to act as per the statement stated hereinabove.

5. For the reasons stated above, petition succeeds qua and the impugned complaint being CR No. I 42/2007 registered with Patdi Police Station is quash and set aside qua the present petitioners only. Rule is made absolute to the aforesaid extent.

(M.R.Shah, J.)

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